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v. Thompson, 136 Ind. 611, 36 N. E. 643; *Parkinson v. Sherman*, 74 N. Y. 88; *Platt v. Gilchrist*, 3 Sandf. (N. Y.) 118. See 8 HARV. L. REV. 119. Even the pendency of an action at law by a third party to assert paramount title is not a conclusive answer to foreclosure proceedings. *Banks v. Walker*, 2 Sandf. Ch. (N. Y.) 344; *Platt v. Gilchrist*, *supra*. But in such a case equity may stay foreclosure, pending the determination of the action at law. *Johnson v. Gere*, 2 Johns. Ch. (N. Y.) 546. See *Glenn v. Whipple*, 12 N. J. Eq. 50; *Edwards v. Bodine*, 26 Wend. (N. Y.) 109, 114. Fraud or mistake might, of course, furnish a basis for rescission. *Finck v. Canadaway Fertilizer Co.*, 152 N. Y. App. Div. 391, 136 N. Y. Supp. 914; *Matter of Price*, 67 N. Y. 231. See *Parkinson v. Sherman*, *supra*, 94. But in the principal case any defect of title was patent on the records, so that relief of this sort was impossible. Whenever the purchaser is protected by covenants, he may of course recover for any breach of warranty, and will even have a defense to foreclosure by way of circuitry of action, if there has been eviction by or surrender to paramount title. See *Platt v. Gilchrist*, *supra*. The later acquisition of paramount title by the purchaser, moreover, will not inure to the benefit of the grantor, where the mortgage contains no warranty of title. *Brown v. Phillips*, 40 Mich. 264. Cf. *Jackson v. Littell*, 56 N. Y. 108. This should be equally the case where the deed and the mortgage each contain full covenants. *Randall v. Lower*, 98 Ind. 255. Cf. *Bush v. Marshall*, 6 How. (U. S.) 284. But where the mortgage warrants title, and the original deed does not, it will be completely enforceable. *Saunders v. Publishers' Paper Co.*, 208 Fed. 441; *Hitchcock v. Fortier*, 65 Ill. 239.

NEGLIGENCE — DUTY OF CARE — LIABILITY FOR OPERATION OF AUTOMOBILE IMPROPERLY REGISTERED. — The owner of an improperly registered automobile permitted his son to take it for a ride. The son negligently injured the plaintiff. *Held*, that the father's failure to register the car according to law renders him liable for the son's negligence. *Gould v. Elder*, 107 N. E. 59 (Mass.).

For a discussion of this case, as the latest development of the Massachusetts law concerning the relation of illegal conduct to negligence, see this issue of the REVIEW, at page 505.

NEGLIGENCE — LIABILITY FOR FIRE LOSS CAUSED BY INJURY TO THIRD PARTY'S HOSE. — A fire hose which lay across the track was negligently cut by a street car of the defendant company's. In consequence certain goods of the plaintiff's which were stored in the burning building were destroyed. *Held*, that the plaintiff may recover. *Birmingham, E. & B. R. Co. v. Williams*, 66 So. 653 (Ala.).

For a discussion of this case, see NOTES, p. 511.

NEGLIGENT MISREPRESENTATION — PARTICULAR CASES — ATTORNEY AND CLIENT: NEGLIGENT STATEMENT AS TO SECURITY. — The defendant, as solicitor for the plaintiff, induced him to release certain lands from a mortgage, by negligently misrepresenting the value of the remaining security. The defendant himself had a subsequent lien on the lands released, and the security retained by the plaintiff proved wholly inadequate. The lower court found that there had been no conscious misrepresentation by the defendant. *Held*, that the plaintiff can nevertheless recover. *Nocton v. Lord Ashburton*, [1914] A. C. 932.

Where there exists between the parties merely a general duty to be honest, a negligent misrepresentation will not make the defendant liable. *Derry v. Peek*, L. R. 14 A. C. 337; *Angus v. Clifford*, [1891] 2 Ch. 449. This doctrine has been much criticised in both England and America. 5 LAW QUART. REV. 410; 14 HARV. L. REV. 185; 24 *id.* 415. And it has not been universally followed in the courts of this country. See *Cunningham v. C. R. Pease, etc. Co.*, 74 N. H. 435, 69 Atl. 120. Cf. *Watson v. Jones*, 41 Fla. 241, 25 So. 678;

Krause v. Busacker, 105 Wis. 350, 81 N. W. 406. But even if the rule be adopted, subsequent cases have made it clear that it does not affect the well-settled principles that conscious misrepresentation is not necessary to an implied warranty of an agent's authority, to a warranty, to an estoppel, or in cases where a relational duty to know the truth exists between the parties. *Starkey v. Bank of England*, [1903] A. C. 114. See *Low v. Bouverie*, [1891] 3 Ch. 82, 101; *De la Bere v. Pearson, Ltd.*, [1908] 1 K. B. 280. In accord with the instant case, therefore, attorneys may be held for damages sustained by their clients by reason of negligent advice. *Byrnes v. Palmer*, 18 N. Y. App. Div. 1, 45 N. Y. Supp. 479; *Jamison v. Weaver*, 81 Ia. 212, 46 N. W. 996. Cf. *Purves v. Landell*, 12 Cl. & F. 91. In view of the benefit that accrued to the attorney from the misrepresentation, recovery may also be had upon the principle that a fiduciary will not be allowed to profit by the breach of his obligation, however innocent he may have been of conscious falsification. *Buckley v. Wilford*, 2 Cl. & F. 102; *Gibbons v. Hoag*, 95 Ill. 45; *Hoopes v. Burnett*, 26 Miss. 428.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — LIMITATION TO ISSUE OF PLAINTIFF'S CAPACITY. — An administratrix brought suit without alleging or proving her appointment and qualification. This defect was considered immaterial and not taken advantage of, but after verdict and judgment for plaintiff, pending appeal, a decision showed that this defect was demurrable. There was no other error in the proceedings to justify a new trial. *Held*, that a new trial will be granted, but limited to the issue made on the omitted averment. *Moss v. Campbell's Creek R. Co.*, 83 S. E. 721 (W. Va.).

From the earliest times there has been a notion that the issues of a case after verdict were entirely inseparable and that a new trial must involve a reopening of the whole case. *Bond v. Spark*, 12 Mod. 275. See *contra*, *King v. Mawbey*, 6 T. R. 619, 638. A new trial, however, has never been regarded as a matter of right, but rather as a method of securing justice and correcting errors. *Hutchinson v. Piper*, 4 Taunt. 555. Consequently, if as a matter of fact the situation is such that the error is confined to a particular portion of the case and those issues are distinct and can be severed from the rest, the ends of justice will be better served by preserving the good and discarding only what is erroneous. *Lisbon v. Lyman*, 49 N. H. 553, 582. This result has been reached in cases where the error was solely in regard to damages. *Boyd v. Brown*, 17 Pick. (Mass.) 453, 461. But cf. *Cerny v. Paxton & Gallagher Co.*, 83 Neb. 88, 119 N. W. 14. See also 22 HARV. L. REV. 540. A similar procedure has been followed where the only error was on the issue of the plaintiff's capacity, as in the principal case. *Robbins v. Townsend*, 20 Pick. (Mass.) 345. Whether or not in a given case a partial retrial will be proper must depend largely on its peculiar facts and on the discretion of the court as to the balance between public convenience and justice to the parties. *Hall v. Hall*, 131 N. C. 185, 42 S. E. 562. In some states the matter is covered by statute. See *Smith v. Whittlesey*, 79 Conn. 189, 63 Atl. 1085.

PUBLIC SERVICE COMPANIES — REGULATION OF PUBLIC SERVICE COMPANIES — VALUATION FOR RATE PURPOSES. — A public service company had a non-exclusive revocable franchise. The Public Utility Commissioners ordered that no value be assigned to this franchise beyond the actual cost of procuring it when they computed the "present value" of the company's property, as a preliminary to regulating its rates. The Supreme Court of the state upheld this order. 84 N. J. L. 463. On appeal to the Court of Errors and Appeals, *held*, that the order be reversed. *Public Service Gas Co. v. Board of Public Utility Commissioners*, 92 Atl. 606 (N. J.).

See NOTES, p. 501, on the question of valuing franchises for rate-making and other purposes.